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No. 390.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

ISAAC S. MORELAND,

Appellant,

vs.

**J. SAM BROWN, as Receiver of the First
National Bank of Helena,**

Appellee.

TRANSCRIPT OF RECORD.

Appeal from the United States Circuit Court, for the
District of Montana.

FILED

SEP 8 -1897

INDEX.

	Page
Amended Bill of Complaint	10
Assignment of Errors	24
Clerk's Certificate to Transcript	25
Complaint	3
Decree of Dismissal	20
Demurrer	7
Demurrer to Amended Complaint	17
Notice of Appeal	22
Order Substituting Party Defendant	9
Order Sustaining Demurrer	8
Order Sustaining Demurrer	19
Petition for Appeal	23
Stipulation as to Printing	1

*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

ISAAC S. MORELAND,
Complainant and Appellant,

vs.

J. SAM BROWN, as Receiver of the
First National Bank of Helena,
Montana,
Defendant and Respondent.

Stipulation as to Printing.

It is hereby stipulated by and between the parties above named by their counsel, respectively, that the clerk of this court shall print only the original complaint, and demurrer thereto; the amended bill herein, the demurrer thereto, the decree of the court, the notice of appeal and the allowance thereof, the assignment of errors, together with proceedings had herein and all orders made by the court in this cause, including the order of the court sustaining the demurrer of the defendant to the amended

bill, comprising pages to of the certified record herein, and that the cause may be heard upon such printed record; the parts of the record not to be printed under this stipulation embracing the summons from the District Court of the First Judicial District of the State of Montana in and for the County of Lewis and Clarke, and the petition for the removal of the cause on behalf of the defendant to the Circuit Court of the United States in and for the District of Montana, with the bond and order removing the cause, and also the citation and bond on this appeal.

Helena, Montana, July 14, 1897.

RICHARD R. PURCELL, and

THOMAS J. WALSH,

Solicitors for Appellant.

TOOLE & WALLACE,

Solicitors for Respondent.

In the District Court of the First Judicial District, of the State of Montana, in and for the County of Lewis and Clarke.

ISAAC S. MORELAND,

Plaintiff,

vs.

E. D. EDGERTON, as Receiver of the
First National Bank of Helena, Mon-
tana,

Defendant.

Complaint.

The plaintiff above named complains to the court, and alleges:

I. That the First National Bank of Helena, Montana, is a corporation organized under the laws of the United States in reference to national banks; that on the third day of September, 1896, it suspended operations, being insolvent, and that thereafter, on or about the 15th day of October, 1896, the said defendant was, by the comptroller of the currency, duly appointed the receiver thereof.

II. Plaintiff further avers that on the 31st day of August, 1896, there was due the plaintiff from one Thomas Anderson of the city of New York, the sum of \$2,635.00, which on said date, the said Anderson, by agreement with plaintiff, deposited in the First National Bank of New York City, to be, by the said bank, transmitted and paid to plaintiff.

III. That the said First National Bank of New York forthwith telegraphed to the First National Bank of Helena, Montana, on said 31st day of August, 1896, to pay the said sum of \$2,635.00 to the plaintiff and charge the same to the account of the said First National Bank of New York; that plaintiff, being advised of the said direction so received by the said First National Bank of Hel-

ena, Montana, called at the said bank and demanded payment of said sum, but that said bank refused to give the plaintiff anything in payment of the said sum except exchange drawn by it upon the said First National Bank of New York, which plaintiff refused to accept; that the said bank likewise requested of plaintiff that he permit the said sum to be placed to the credit of his account with the said First National Bank of Helena, Montana, with which request plaintiff likewise refused to comply; and that after further protracted negotiations, the plaintiff that at all times demanding the immediate payment of the said sum in cash, the said bank peremptorily declined to give the plaintiff anything except exchange on New York; that finally plaintiff accepted of the said First National Bank of Helena, Montana, a draft drawn by it on the First National Bank of New York, with the express reservation on his part at the time, declared to the said bank, that he should consider it as payment only in the case said draft was duly honored.

IV. And plaintiff further avers that the said draft was forthwith transmitted to the First National Bank of New York, and payment of the same by it was refused for the reason, as the fact was, that the said First National Bank of Helena, Montana, had closed its doors and suspended prior to the presentation of the said draft for payment to the said First National Bank of New York.

V. And plaintiff further avers that immediately upon the payment of the said sum to the said First National

Bank of New York, by the said Anderson, the said bank placed the same to the credit of the account of the First National Bank of Helena, Montana, marking the entry thereof on its books as on account of plaintiff; and plaintiff further avers that at the time of the suspension of the said First National Bank of Helena, Montana, it had to its credit upon the books of the First National Bank of New York about \$11,000.00:

That it was at that time obligated to the said First National Bank of New York in an amount equal to about \$15,000.00 to secure the payment of which the said First National Bank of New York held collateral security of the First National Bank of Helena, Montana, amounting to the face value of upwards of \$100,000.00; that subsequent to the appointment of the defendant as receiver as aforesaid, by the advice and permission of the comptroller of the currency, he paid to the said First National Bank of New York a sum equal to the difference between the amount for which said collateral was held and the amount to which the said First National Bank of Helena was credited by the said First National Bank of New York including the sum so as aforesaid paid it on account of plaintiff to-wit, about \$4,000.00, and thereby procured the said collateral to be released and turned over to defendant, out of which the said defendant has, since the same was so turned over to him as aforesaid, realized a sum largely in excess of the amount paid to the said First National Bank of New York as aforesaid.

VI. And plaintiff further avers that prior to the commencement of this action he duly demanded of the defendant that he pay plaintiff the said sum of \$2,635.00, the plaintiff offering at the same time to surrender to the defendant the said draft so as aforesaid made in his favor on the said First National Bank of New York by the said First National Bank of Helena, but the defendant refused and still refuses to pay said sum or any part thereof; and the plaintiff hereby offers to surrender the said draft into court and deliver the same up to defendant.

Wherefore, plaintiff demands judgment that the said defendant as receiver of the said First National Bank of Helena, Montana, be required by this court to pay to the plaintiff the said sum of \$2,635.00; that plaintiff recover his costs herein, and that he have such other and further relief as to the court may seem just.

R. R. PURCELL &
T. J. WALSH,
Attorneys for Plaintiff.

State of Montana,)
County of Lewis and Clarke. } ss.

Isaac S. Moreland, being duly sworn says that he is the plaintiff above named; that he has read the foregoing complaint, and that the matters and facts stated therein are true to his own knowledge, except as to such as are

therein stated on information and belief, and as to such he believes it to be true.

ISAAC S. MORELAND.

Subscribed and sworn to before me this 25th day of November, 1896.

T. J. WALSH,
Notary Public in and for Lewis and Clarke County, State
of Montana.

[Endorsed]: Filed, Nov. 28, '96. Jess C. Ricker, Clerk.
By Geo. E. Bayha, D. C.

*In the District Court of the First Judicial District of the State
of Montana, in and for the County of Lewis and Clarke.*

ISAAC S. MORELAND,

Plaintiff,

vs.

E. D. EDGERTON, as Receiver of the

First National Bank, of Helena,

Montana,

Defendant.

Demurrer.

Now comes the defendant, E. D. Edgerton, as receiver of the First National Bank of Helena, Montana, in the

above-entitled action and demurs to the plaintiffs complaint therein, and for cause shows:

I. That said complaint does not state facts sufficient to constitute a cause of action.

TOOLE & WALLACE,
Attorneys for Defendant.

[Endorsed]: Filed, Jany. 13th, 1897. Finlay McRae, Clerk. By Jas. Gilchrist, D. C.

And thereafter, to-wit on the 27th day of April, 1897, an order was duly made which is entered on final record as follows, to-wit:

United States Circuit Court, District of Montana.

I. S. MORELAND,

vs.

E. D. EDGERTON, as Receiver of the
First National Bank of Helena,
Montana.

No. 466.

Order Sustaining Demurrer.

16th day April term A. D. 1897, Tuesday the 27th day of April 1897. In open court.

This cause came on regularly for hearing this day on demurrer to complaint, T. J. Walsh, Esq. appearing as

counsel for plaintiff and Wm. Wallace, Jr., Esq., appearing as counsel for defendant, and after argument of counsel demurrer submitted, and after due consideration, it is ordered that said demurrer be and the same hereby sustained, and thereupon plaintiff granted ten days in which to amend complaint.

And thereafter, to-wit, on the 10th day of May, 1897, an order was duly made which is entered on final record as follows, to-wit:

United States Circuit Court, District of Montana.

I. S. MORELAND,

vs.

E. D. EDGERTON, as Receiver of the
First National Bank of Helena,
Montana,

} No. 466.

Order Substituting Party Defendant.

24th day of April term, A. D. 1897, Monday, the 10th day of May, 1897. In open court.

On motion of counsel for plaintiff, said plaintiff is hereby granted leave to substitute as party defendant herein J. Sam Brown as receiver of the First National Bank of Helena, Montana, in place and stead of E. D. Edgerton as

receiver, and thereupon plaintiff granted leave to file amended bill of complaint.

And thereafter on said 10th day of May, 1897, complainant herein filed his amended bill in equity which is entered on final record as follows, to-wit:

In the Circuit Court of the United States, Ninth Judicial District, in and for the District of Montana.

ISAAC S. MORELAND,

Complainant,

vs.

J. SAM BROWN, as Receiver of the
First National Bank of Helena,
Montana,

Defendant.

Amended Bill of Complaint.

To the Judges of the Circuit Court of the United States,
for the District of Montana:

Your orator, Isaac S. Moreland, by leave of Court first had and obtained, files this, his amended bill, against the above named J. Sam Brown, as receiver of the First National Bank, of Helena, Montana, and says:

I.

That the First National Bank, of Helena, Montana, is a corporation organized under the laws of the United States in reference to national banks; that on the 3rd day of September, 1896, it suspended operations, being insolvent, and that thereafter, on or about the 15th day of October, 1896 one E. D. Edgerton was, by the comptroller of the currency, duly appointed the receiver thereof.

II.

Your orator further avers that on the 31st day of August, 1896, there was due your orator from one Thomas Anderson, of the city of New York, the sum of \$2,635.00, which on said date, the said Anderson, by agreement with your orator deposited in the First National Bank, of New York City, a corporation organized under the laws of the United States in reference to national banks, to be by the said bank transmitted and paid to your orator.

III.

That the said First National Bank of New York, forthwith telegraphed to the First National Bank of Helena, Montana, on said 31st day of August, 1896, to pay the said sum of \$2,635.00 to your orator and charge the same to the account of the said First National Bank, of New

York; that your orator being advised of the said direction, so received by the said First National Bank, of Helena, Montana, called at the said bank and demanded payment of said sum, but that the said bank refused to give your orator anything in payment of the said sum, except the exchange drawn by it upon the said First National Bank, of New York, which your orator refused to accept; that the said bank likewise requested your orator that he permit the said sum to be placed to the credit of his account with the said First National Bank, of Helena, Montana, with which request your orator likewise refused to comply; and that after further protracted negotiations, your orator at all times demanding the immediate payment of the said sum in cash, the said bank peremptorily declined to give your orator anything except exchange on New York; that finally your orator accepted of the said First National Bank, of Helena, a draft drawn by it on the First National Bank, of New York, with the express reservation on his part at the time, declared to the said bank, that he should consider it payment only in case the said draft was duly honored.

IV.

And your orator further avers that the said draft was forthwith transmitted to the First National Bank, of New York, and payment of it was refused for the reason, as the fact was, that the said First National Bank, of Helena, Montana, had closed its doors and suspended

prior to the presentation of the said draft for payment to the said First National Bank, of New York.

V.

And your orator further avers that immediately upon the payment of the said sum to the said First National Bank, of New York, by the said Anderson, the said bank placed the same to the credit of the account of the First National Bank, of Helena, Montana, marking the entry thereof on its books as on account of your orator. And your orator further avers that at the time of suspension of the said First National Bank, of Helena, Montana, it had to its credit upon the books of the First National Bank, of New York, about \$11,000.00; that it was at that time obligated to the said First National Bank, of New York, in an amount equal to about \$15,000.00, to secure the payment of which the said First National Bank, of New York, held collateral security, consisting of bills payable and other evidences of indebtedness due the said First National Bank, of Helena, amounting to the face value of upwards of \$100,000.00; that subsequent to the appointment of the said E. D. Edgerton, as receiver as aforesaid, by the advice and permission of the comptroller of the currency, for the purpose of redeeming such collateral security, he paid to the said First National Bank of New York, a sum equal to the difference between the amount for which said collateral was held and the amount to which the said First National Bank, of Hel-

ena, was credited by the said First National bank of New York, including the sum so as aforesaid paid it on account of your orator, to-wit, about \$4,000.00, and thereby procured the said collateral to be released and turned over to the said receiver, out of which the said defendant has, since the same was so turned over to him as aforesaid as your orator is informed and believes, realized a sum largely in excess of the amount paid to the First National Bank, of New York, as aforesaid.

VI.

And your orator further avers on information and belief that at the time the said First National Bank of New York surrendered the said collateral upon the receipt by it from the said receiver of the balance so remaining due it from the said First National Bank of Helena, it believed and supposed that the said First National Bank, of Helena, had paid your orator the amount of said draft and was justly entitled to the credit for the amount of same, so given it on the books of the said First National Bank of New York.

VII.

And your orator further avers that prior to the commencement of this action he duly demanded of the said receiver that he pay your orator the said sum of \$2,635.00, your orator offering at the same time to surrender to defendant the said draft, so as aforesaid made in his favor

on the said First National Bank of New York, by the First National Bank of Helena, but that said receiver and his successor refused and still refuse to pay the said sum or any part thereof; and your orator hereby offers to surrender the said draft into court and deliver the same up to defendant.

VIII.

And your orator further avers that subsequent to the occurrence of the acts hereinbefore set out, the said E. D. Edgerton resigned as receiver of the said First National Bank, of Helena, and that the defendant was duly appointed his successor; that he qualified as such; that all effects of the said bank have been turned over to him as such receiver and that he is now acting in that capacity.

IX.

And your orator further avers that at the time the said First National Bank, of Helena, delivered the said draft to your orator it was hopelessly and irretrievably insolvent and that its being so insolvent was known to the executive officers and trustees thereof but was not known by your orator.

Wherefore, your orator prays judgment that he be decreed to have a lien upon the said collateral securities, so as aforesaid by the said receiver redeemed from the First National Bank, of New York, to the amount of \$2,635.00, together with the interest thereon at the rate

of ten per cent from the 31st day of August, 1896; that said defendant be required to pay into court for the use of your orator the said sum with interest thereon as aforesaid and that your orator recover his costs herein and that he have such other and further relief as to the court may seem just.

R. R. PURCELL &

T. J. WALSH,

Solicitors and Attorneys for Complainant.

State of Montana, }
County of Lewis and Clarke. } ss.

R. R. Purcell, being duly sworn, deposes and says that he is one of the attorneys for the above-named complainant and makes this verification in his behalf, that he has read the foregoing bill and knows the contents thereof; that the facts therein stated are true to the best of his knowledge, information, and belief. That the reason he makes this verification is that complainant is absent from the county of Lewis and Clarke, wherein affiant resides .

Subscribed and sworn to before me this 7th day of May, 1897.

T. J. WALSH,

Notary Public in and for Lewis and Clarke County, State of Montana.

[Endorsed]: Title of Court and Cause. Bill in Equity.
Filed May 10, 1897.

And thereafter to-wit on the 7th day of June, 1897, the defendant filed his demurrer to said amended bill in equity which is entered on final record as follows, to-wit:

*In the Circuit Court of the Ninth Circuit of the United States
in and for the District of Montana.*

ISAAC S. MORELAND,

Complainant,

vs.

J. SAM BROWN, as Receiver of the
First National Bank of Helena,
Montana,

Defendant.

Demurrer to Amended Complaint.

The demurrer of the above-named defendant, J. Sam Brown, as receiver of the First National Bank of Helena, Montana, to the amended bill of complaint, of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things, in the said bill of complaint contained, to be true, in such manner and form as the same are herein set forth and alleged, doth demur to said amended bill.

And for causes of demurrer showeth:

1. That it appeareth by the complainant's own showing by said amended bill, that he is not entitled to the relief prayed by the amended bill against this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, as amended, this defendant doth demur thereto. And he prays the judgment of the Honorable Court whether he shall be compelled to make an answer to the said amended bill; and he humbly prays to be hence dismissed with reasonable costs in this behalf sustained.

TOOLE & WALLACE,

Solicitors and Counsel of Above-named Defendant.

I hereby certify that the foregoing demurrer is in my opinion, well founded in point of law.

Dated, Helena, Montana, June 5th, 1897.

W. WALLACE, JR.

Of Counsel for Defendant.

United States of America,	}	ss.
District of Montana,		
County of Lewis and Clarke.		

J. Sam Brown being duly sworn deposes and says: I am the defendant above named. The foregoing demurrer is not interposed for delay.

.....

J. S. Brown, Receiver First National Bank of Helena. 19

Subscribed and sworn to before me this 7th day of June, 1897.

.....

Notary Public in and for said Lewis and Clarke County,
Montana .

Verification waived.

R. R. PURCELL &
T. J. WALSH.

[Endorsed]: Title of Court and Cause. Filed June 7th, 1897.

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And thereafter to-wit on the 24th day of June, 1897, an order was made sustaining said demurrer which said order is entered on final record as follows, to-wit:

United States Circuit Court, District of Montana.

I. S. MORELAND,

vs.

J. SAM BROWN, as Receiver of the
First National Bank, of Helena,
Montana.

} No. 466.

Order Sustaining Demurrer.

51st day, April term A. D. 1897, Thursday, the 24 day of June, A. D. 1897. In open court.

This cause came on regularly for hearing this day on

demurrer to bill of complaint, and after argument of counsel demurrer submitted to the court, and after due consideration it is ordered that said demurrer be and the same hereby is sustained.

And thereupon decree in favor of defendant ordered entered for dismissal of action and costs.

And thereafter, to-wit on the 30th day of June, A. D. 1897, a final decree was duly signed, which said final decree is entered on final record as follows, to-wit:

*In the Circuit Court of the United States, Ninth Circuit
District of Montana.*

ISAAC MORELAND,

Complainant,

vs.

J. SAM BROWN, Receiver,

Defendant.

Decree of Dismissal.

Be it remembered, that the above action having come on for judgment upon the sustaining of defendant's demurrer to the amended complaint, plaintiff having elected to stand upon his amended complaint, defendant having moved for judgment, it is therefore ordered and adjudged that said bill of complaint be dismissed; that complainant

be dismissed out of court without day and take nothing by his said bill, and that defendant recover his costs herein taxed at (\$38.80) thirty-eight 80-100 dollars.

Signed and passed in open court this 30th day of June A. D. 1897.

HIRAM KNOWLES,
Judge.

[Endorsed]: Title of Court and Cause. Decree. Filed and entered June 30th, 1897. Geo. W. Sproule, Clerk.

And thereafter, to-wit on the 14th day of July, 1897, the notice of appeal herein and allowance thereof was duly filed as follows, to-wit:

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of Montana.

ISAAC S. MORELAND,
Complainant,

vs.

J. SAM BROWN, as Receiver of the
First National Bank of Helena,
Montana,

Defendant.

Notice of Appeal.

The above complainant Isaac S. Moreland, conceiving himself aggrieved by the decree herein entered by the Circuit Court of the United States, in and for the District of Montana, on the 30th day of June, 1897, dismissing the bill of complaint of the complainant and adjudging that he take nothing by his action, and for costs to the defendant, do hereby appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and he prays that this, his appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Helena, Montana, July 8, 1897.

RICHARD R. PURCELL and
THOMAS WALSH,

Solicitors for complainant.

And now to-wit on the 12th day of July, 1897, it is ordered that the appeal be allowed as prayed for.

HIRAM KNOWLES,

Judge presiding.

Due personal service of the foregoing notice of appeal, this 14th day of July, 1897, hereby admitted.

TOOLE & WALLACE,

Solicitor for Defendant.

[Endorsed]: Title of Court and Cause. Notice of Appeal. Filed July 14, 1897. Geo. W. Sproule, Clerk.

And thereafter, to-wit on the 8th day of July, 1897, the petition for appeal and assignment of error was filed here in in the words and figures as follows, to-wit:

Petition for Appeal.

United States of America, }
District of Montana. } ss.

To the Honorable Justices of the United States Circuit Court of Appeals, for the Ninth Circuit:

And now comes Isaac S. Moreland, by his solicitors, Richard R. Purcell and Thomas J. Walsh, and complains that in the records and proceedings, and also in the rendition of the decree in a suit between the said Isaac S. Moreland, complainant, and J. Sam Brown, as receiver of the First National Bank of Helena, Montana, heard in and before the United States Circuit Court, in and for the District of Montana wherein a decree was by the said court rendered and entered on the 30th day of June, 1897, in favor of the defendant therein, the said J. Sam Brown, as receiver of the First National Bank of Helena, Montana, manifest error hath intervened to the great damage of the said Isaac S. Moreland.

Wherefore he prays for the allowance of an appeal and such other process as may cause the same to be corrected

by the United States Circuit Court of Appeals for the Ninth Circuit aforesaid.

RICHARD R. PURCELL and
THOMAS J. WALSH,

Solicitors for the said Complainant Isaac S. Moreland

The appeal in the above cause allowed as prayed for this the 12th day of July, 1897.

HIRAM KNOWLES,
Judge.

In the Circuit Court of the United States, in and for the District of Montana.

ISAAC S. MORELAND,

Appellant,

vs.

J. SAM BROWN, as Receiver of the
First National Bank of Helena,
Montana.

Respondent.

Assignment of Errors.

1. It was error in the court to sustain the demurrer of the respondent to the amended bill herein.
2. It was error in the court to render a decree herein in favor of the respondent adjudging that the appellant

take nothing by his suit and for costs to the respondent, or any decree whatever in favor of the said respondent.

RICHARD R. PURCELL and

THOMAS J. WALSH,

Solicitors for appellant.

[Endorsed]: Title of Court and Cause. Petition and Assignment of Errors. Filed July 8, 1897. Geo. W. Sproule, Clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

United States of America. }
District of Montana. } ss.

Clerk's Certificate to Transcript.

I, George W. Sproule, clerk of the United States Circuit Court, Ninth Circuit, District of Montana, do hereby certify and return to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 36 pages, numbered consecutively from 1 to 36 inclusive, is a true and correct transcript of the pleadings, process, records, orders, and decree and other proceedings had in said cause, and of the whole thereof, as appear from the original records and files of said court in my custody; and I further do certify

and return that I have annexed to said transcript, and included within said paging the original citation.

I further certify, that the costs of the transcript of record amounts to the sum of \$11.50, and that the same has been paid by the appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 28th day of July, A. D. 1897.

[Seal]

GEO. W. SPROULE,
Clerk.

[Endorsed]: No. 390. United States Circuit Court of Appeals for the Ninth Circuit. Isaac S. Moreland, Appellant, v. J. Sam Brown, as Receiver of the First National Bank of Helena, Appellee. Transcript of Record. Appeal from the United States Circuit Court for the District of Montana.

Filed Aug. 2, 1897.

F. D. MONCKTON,
Clerk.